to prevent charitable testamentary trusts from failing, either through indefiniteness of the beneficiaries[8] or of the trustees.[4] Some courts hold the trusts valid without any statute, relying, perhaps, on the non-statutory power over charities which was derived by the courts of equity from the king as *parens patriæ*;[5] though no less an authority than Marshall was of the opinion that such trusts are invalid in the absence of statute, and denied the adequacy of the royal prerogative to mend so grave a defect as the non-incorporation of the designated trustee.[6]

Where property is left, as before, to unincorporated charitable or religious societies, but by a devise or bequest absolute in form, and not expressly providing that it be held in trust, we find the courts using different reasoning, and dividing along different lines. Some say flatly that such gifts are void for lack of any one capable of taking title.[7] Others declare that the society may take,[8] and jump the difficulty that, in legal contemplation, the society does not exist, apart from its individual members. Even these courts, however, as a matter of practice, can only decree that the property be turned over to the treasurer, and rely on him for the rest.[9] Some courts draw a distinction between the power to take money for general purposes and the power to take land, on the ground that there is no practical objection to the former, whereas perpetual succession is requisite for the latter.[10] Still other courts, though admitting that the unincorporated society cannot hold title, give it to the heirs of the testator in trust for the society.[11] Most of the courts in this class of cases lay no stress on the charitable nature of the organizations, and argue as though they were concerned with unincorporated clubs or labor unions. It would seem in reason that an absolute devise should be dealt with exactly as if an express trust had been declared, for any bequest to a religious or charitable association is really a bequest in trust for the indefinite class which the association purports to benefit. Certainly the testator can rarely intend the members of the society to be either legal tenants in common for their own private purposes, or co-beneficiaries. Some cases have proceeded on this principle, and although the devise was absolute in form have recognized the applicability of the statutes concerning charitable trusts.[12] The latest case in point, however, has adhered to the distinction. *Fralick* v. *Lyford*, 107 N. Y. App. Div. 543.

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CONSTITUTIONALITY OF DELEGATION OF LEGISLATIVE POWER. — The maxim of Constitutional Law that legislative power may not be delegated is as broad as its boundaries are vague. In applying it courts are reluctant to declare a statute unconstitutional unless clearly repugnant to the Constitution.[1] The cases involving the question in which statutes are upheld

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[8] Board, etc., of Rush Co. *v.* Dinwiddie, 139 Ind. 128.
[4] M'Cord *v.* Ochiltree, 8 Blackf. (Ind.) 15.
[5] Charles *v.* Hunnicutt, 5 Call (Va.) 311. *Cf.* M'Cord *v.* Ochiltree, *supra*.
[6] Baptist Ass'n *v.* Hart's Ex'rs, 4 Wheat. (U. S.) 1.
[7] Owens *v.* Missionary, etc., Society, 14 N. Y. 380. *Cf.* State, etc., Church *v.* Warren, 28 Ind. 338.
[8] Ex'rs of Burr *v.* Smith, 7 Vt. 241.
[9] Parker *v.* Cowell, 16 N. H. 149.
[10] Estate of Ticknor, 13 Mich. 44. *Cf.* Hadden *v.* Dandy, 51 N. J. Eq. 154.
[11] American, etc., Society *v.* Wetmore, 17 Conn. 181.
[12] West *v.* Knight, part 1, Ch. Cas. 134.

[1] *Re* Janvrin, 174 Mass. 514.

divide into three main classes, shading into each other. Under the first it is held that the operation of a law, deemed by the legislators expedient only on the fulfilment of certain conditions, may be made contingent upon such fulfilment by others than the legislators themselves, and the granting of the right to satisfy such conditions is not a delegation of legislative power. Thus, terms of court may be transferred from one town to another on condition that the citizens of the latter provide accommodations.[2] On the other hand, the question of suffrage for women can probably not depend on the vote of the people at large, for then they would be deciding on the expediency of the law, irrespective of the legislators' judgment.[3]

The second class includes the cases involving the distinction between administrative and legislative powers. The powers conferred vary so greatly, according as the scope of the statute is large or narrow, that courts find it difficult to draw the line. The cases concern largely the powers of boards and commissions, to which it is desirable to allow breadth of discretion because of their superior fitness to meet conditions in their special field. A usual rule is that the power conferred is proper if it is to determine facts on which the action of the law depends.[4] Thus, there is little doubt of the power of a school board to select uniform text-books;[5] it is going further to allow a stock commission to prohibit the sale of milk from any dairy it determines to be unsanitary;[6] and still further to entrust a board of health with power to decree compulsory vaccination.[7] Courts have doubtless gone great lengths in these cases in the laudable endeavor to secure to boards and commissions powers which, under modern necessities for specialization, can be efficiently exercised only by means of such agencies.

The third class of cases forms a real exception to the maxim; involving, namely, the principle (recognized from early times) that the delegation of powers of local self-regulation is valid.[8] Here too the limits have been stretched, and legislative enactments dependent on acceptance by the voters in each locality are generally upheld when relating to matters of local concern.[9] At present there is litigation in the lower Massachusetts courts regarding delegation to town selectmen, not ordinarily considered a legislative body, of power to pass speed ordinances. A recent Massachusetts decision well illustrates the widening tendency. State fish commissioners were sustained in their action under a statute allowing them to prohibit any discharge of sawdust into a stream if they determined that it occasioned injury to edible fish. *Commonwealth* v. *Sisson*, 33 Banker & Tradesman 2216 (Mass. Sup. Ct., Oct. 17, 1905). The situation is not essentially different from many in which the action was upheld as merely administrative, but the court unequivocally declares that the power conferred is legislative, but nevertheless allowable, and a parallel is drawn to cases upholding similar powers granted to state boards of health. In these it would seem that state boards were perhaps originally sustained in the exercise of their powers because such powers were allowed local boards, and the latter were considered to come within the local self-government

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[2] Walton *v.* Greenwood, 60 Me. 356.
[3] *Re* Municipal Suffrage to Women, 160 Mass. 586.
[4] State *v.* Thompson, 160 Mo. 333.
[5] Leeper *v.* State, 103 Tenn. 500.
[6] State *v.* Broadbelt, 89 Md. 565.
[7] Blue *v.* Beach, 155 Ind. 121.
[8] State *ex rel.* White *v.* Barker, 116 Ia. 96.
[9] Wooman *v.* County of Hudson, 52 N. J. Law 398.

exception.[10] Possibly the present decision goes further than any other in its language,[11] but whether by extension of administrative powers or by analogy with the recognized exception, the trend of the courts is certainly towards the achievement in similar cases of the result reached in the principal case.

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RIGHTS OF A LIFE TENANT IN A PRIVATE CEMETERY. — Interests in burial lots may be granted either by a document under seal, or by any other agreement. If there is a conveyance under seal, the vendee obtains either a fee simple [1] or an easement,[2] according to the tenor of the instrument and the construction of it warranted by circumstances.[3] If the sale of a burial lot is by mere oral or written agreement, no freehold estate or easement can have been passed. Although, in such cases, the courts commonly say that a mere license has been acquired,[4] yet they generally allow to these licenses most of the qualities of easements.[5] And indeed the true nature of the vendee's interest seems to be that of an equitable right to an easement.[6] A mere license expires with the death of the licensor; but it is hard to believe that any court of equity would allow graves or gravestones to be interfered with by successors of vendors of burial lots, at least if they took with notice of the graves. The requisites for an equitable enforcement of agreements for easements seem all present in agreements for the sale of burial lots, even where there is no writing, — a complete and sufficient contract the terms of which are mostly established by custom, valuable consideration, and acts of part performance unequivocably referable to the supposed agreement.[7] The practical result, that the graves are kept permanently undisturbed, is plainly in harmony with common sense and justice.

Where one is only a life tenant of land, however, it is difficult to see how his powers can extend to selling burial lots in fee simple or as easements enforceable either at law or in equity, since a life tenant can neither convey away his land piecemeal nor incumber it with easements. When, however, the land has already been devoted to the business of conducting a private cemetery, considerations of justice and policy would allow the life tenant to continue the business, and consequently to sell burial lots; for otherwise he is likely to receive little beneficial use of the land. The legal basis for such a rule is hard to find. The Supreme Court of the District of Columbia recently attained this result, on the analogy of a life tenant's right to continue the operation of mines and quarries though the corpus of the estate is thereby diminished, or exhausted. *Hill* v. *Moore*, 33 Wash. L. Rep. 549. The distinction, however, is clear between the mere severance of part of the physical substance of the inheritance by a life tenant with the right to work

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[10] See Brodbine *v.* Revere, 182 Mass. 598.

[11] *Cf.* Nelson *v.* State Board of Health, 186 Mass. 330.

[1] Commonwealth *v.* Mt. Moriah Cemetery Ass'n, 10 Phil. (Pa.) 385.

[2] Buffalo City Cemetery *v.* Buffalo, 46 N. Y. 503.

[3] See *e. g.* in the case of church cemeteries, Richards *v.* Northwest, etc., Church, 32 Barb. (N. Y.) 42; but *contra*, *In re* Brick, etc., Church, 3 Edw. Ch. (N. Y.) 155.

[4] Dwenger *v.* Geary, 113 Ind. 106; Partridge *v.* First, etc., Church, 39 Md. 631; McGuire *v.* Trustees, etc., of Cathedral, 54 Hun (N. Y.) 207.

[5] See Perley, Mortuary Law 178.

[6] Moreland *v.* Richardson, 22 Beav. 596; Conger *v.* Treadway, 50 Hun (N. Y.) 451.

[7] See Wiseman *v.* Lucksinger, 84 N. Y. 31, 38. See also Gale, Easements, 7th ed., 58, 59.